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Supreme Court, U.S.
FILED

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IN THE
Supreme Court of the United States

RAJWINDER SINGH
Petitioner

V

MICHAEL B. MUKASEY
Respondent

On Petition For A Writ of Certiorari
To The United States Court of Appeals
For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

Rajwinder Singh
Pro Se
2718 Washburn Court
Vallejo, CA 94591
253-632-9141

QUESTION PRESENTED

WHETHER THE IJ COMMITTED PREJUDCIAL ERROR IN FINDING PETITIONER TO BE NOT CREDIBLE FOR FAILING TO PROVIDE CORROBRATING EVIDENCE

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The Caption contains the names of all the parties to the Proceeding below.

Pursuant to this Court's Rule 29.6, undersigned petitioner state that Michael B. Mukasey is the United States Attorney General.

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8 U.S.C. § 1252(b)(4)
8 U.S.C. § 1158

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8 C.F.R. § 208
8 C.F.R. § 208.16(c)(2)

PETITION FOR A WRIT OF CERTIORARI

Petitioner Rajwinder Singh respectfully submits this petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPENION BELOW

The Court of appeals' order dated October 16, 2008 denying Rajwinder Singh's petition for rehearing and petition for rehearing en banc is unreported. The opinion of BIA is unreported.

JURISDICTION

This Board of Immigration Appeal had jurisdiction to review the record of deportation proceeding on appeal before it and to enter its judgment anew. The Court of appeals had jurisdiction to review the BIA's decision pursuant to 8 USC section 1252(a)(2)(B)(ii). The jurisdiction of this court is invoked under 28 U.S.C. section 1254

INTRODUCTION

The court of appeals' denied Rajwinder Singh's petition for review, in an unpublished Memorandum Opinion on January 18, 2008, on the sole finding that the "(s)ubstantial evidence supports the BIA's denial of CAT relief because Singh's CAT claim is based on the same testimony that the BIA found not credible and because he points to no other evidence that the BIA should have considered in making its CAT determination."

The panel's January 18, 2008 Memorandum

Opinion is in conflict with:

1. *Sidhu v. INS*, 220 F.3d 1085 (9th Cir. 2000)
2. *Brijmati Singh v. INS*, 134 F.3d 962, 966 (9th Cir. 1998)
3. *Ceballos-Castillo v. INS*, 904 F.2d 519, 520 (9th Cir. 1990)
4. *Chebchoub v. INS*, 257 F.3d 1038, 1043 (9th Cir. 2001)
5. *Chen v. INS*, 266 F.3d 1094, 1098 (9th Cir. 2000)
6. Evis Mfg. Co. v. F.T.C., 287 F.2d 831, 847 (9th Cir. 1961)
7. *Guo v. Ashcroft*, 361 F.3d 1194, 1201 (9th Cir. 2004)
8. *Ladha v. INS*, 215 F.3d 889 (9th Cir. 2000)
9. *Mejia-Paiz v.* INS, 111 F.3d 720, 724 (9th Cir. 1997)
10. *Ramos-Vasquez v. INS*, 57 F.3d 857, 861 (9th Cir. 1995)
11. *Sangha v. INS*, 103 F.3d 1482, 1487 (9th Cir. 1997)
12. *Sidhu v. INS*, 220 F.3d 1085 (9th Cir. 2000)
13. *Turcios v. INS*, 821 F.2d 1396, 1400 (9th Cir. 1987)
14. *United States v. Solano Godines*, 120 F.3d 957, 962 (9th Cir. 1997)
15. *Wang v. INS*, 352 F.3d 1250, 1256-57 (9th Cir. 2003)

SUMMARY OF THE FACTS

The petitioner in this case sought review of the *Per curiam* Order of the Board of Immigration Review ("BIA") dated December 23, 2005, denying the petitioner's Appeal. Among a number of reasons mentioned in support of his appeal, the petitioner affirmatively claimed that he was prima facie eligible for

the relief of asylum, withholding of removal, and CAT protection. He represented that his testimony before two different IJs was credible, corroborated by substantial evidence, and any minor discrepancies in the submitted documentation were immaterial to his claims and were corrected with his testimony, which was credible. The petitioner sought the review by this Honorable Court on the issues of credibility findings of the IJ and the BIA and the BIA's ruling that the petitioner failed to submit corroborating evidence which was not readily available, and the BIA's misinterpretation of minor discrepancies as substantial inconsistencies.

In its decision of January 18, 2008, the panel erroneously denied the petitioner's petition for review, which conflicts with the applicable statute, regulations, and the decided cases, as aforesaid, and elaborated below.

STATEMENT OF THE ISSUES

The petitioner raised a number of issues in his pleadings in the record, which issues are incorporated herein by reference. Majority of the issues in the record, were not addressed in the panel decision, however, the petitioner is addressing the issues considered and ruled upon by the panel here under.

1. Whether the petitioner was credible?
2. Whether the petitioner failed to submit readily available corroborating evidence?
3. Whether the minor discrepancies in the submitted evidence went to the heart of the petitioner's claim for relief?
4. Whether the minor discrepancies in the submitted evidence with the petitioner's credible testimony be construed as non-credible testimony:
5. Whether the BIA abused its discretion by

ignoring the substantial evidence standard and affirming the IJ's finding that the petitioner lacked credibility?

ARGUMENT

The record in this case proves that the petitioner credibly testified before the IJ. He submitted all of the readily available documents to the IJ, as corroborating evidence, supporting his claims for the requested relief. Corroborative evidence, of course, is not a threshold prerequisite to relief under the Convention Against Torture. The applicable regulations provide that an applicant's testimony, "**if credible, may be sufficient to sustain the burden of proof without corroboration.**" 8 C.F.R. § 208.16(c)(2) (emphasis added).

Petitioner provided all the evidence that he had in his control and possession, irrespective of the fact that some of the submitted evidence had a few minor discrepancies. But he did not withhold any of the evidence that he had and that he could readily obtain. "When a party has relevant evidence in his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him." See *Int'l Union, United Automobile, Aerospace and Agric. Implement Workers of Am. (U.A.W.) v. N.L.R.B.*, 459 F.2d 1329, 1336 (1972), citing 2 J. Wigmore, Evidence §285 (3d ed. 1940); see also *Evis Mfg. Co. v. F.T.C., 287 F.2d 831, 847* (9th Cir. 1961); 31A C.J.S. Evidence §167 (2007). The adverse inference rule is a "generally accepted principle of law." See *Smith v. United States*, 128 F. Supp. 2d 1227, 1232 (E.D. Ark. 2000). It applies no less in the immigration context. See, e.g., *Sidhu v. INS*, 220 F.3d 1085, 1089-9 1 (9th Cir. 2000) (immigration judge may draw an inference that

readily available testimony not presented would be unfavorable); *United States v. Solano Godines*, 120 F.3d 957, 962 (9th Cir. 1997) (immigration judge may draw an adverse inference from a defendant's silence in response to questioning in civil deportation proceedings). But in this case, Singh neither had any additional readily available corroborating evidence as misinterpreted and expected by the IJ, nor did he refuse to testify or remained silent in response to the IJ's questioning. He did not withhold any evidence in his control and possession, and he never prevented the DHS from obtaining any additional evidence or from verifying the submitted evidence corroborated by his testimony.

Typically, in the immigration context, a negative inference from a failure to produce readily available evidence goes to the applicant's credibility. In *Sidhu v. INS*, 220 F.3d 1085 (9th Cir. 2000). However, in this case, none of the "readily available" evidence was identified by the IJ which the Singh was expected to produce. Please note that Sidhu and comparable cases are not dispositive because Sidhu and similar cases merely hold that an adverse credibility determination is permissible when "easily available corroborating information" is not produced. Singh produced and submitted all of the readily available information and documents that he could obtain. This case involves the issue of IJ finding minor discrepancies in the submitted evidence. When the submitted evidence was viewed with Singh's testimony under oath, the discrepancies were clearly corrected, addressed and resolved, meeting with the substantial evidence standard, which this Honorable Court failed to analyze and rule on. Singh amended his asylum application at INS interview. The amendment should not be construed as discrepancies in testimony. If amendments to an asylum application be construed as

discrepancies then it will have a chilling effect on those who wants to correct an error in the asylum application. For example, Singh amended his asylum application to state that he entered the United States on a P-3 visa rather than entry without inspection. How a person entered into the United States does not go to the heart of issue of torture.

The adverse credibility determinations meet with varying results on review. Compare *Turcios v. INS*, 821 F.2d 1396, 1400 (9th Cir. 1987) (reversing the IJ's determination that the petitioner "did not establish his credibility due to his evasiveness in answering questions"); with *Wang v. INS*, 352 F.3d 1250, 1256-57 (9th Cir. 2003) (upholding the IJ's adverse credibility determination on "obvious evasiveness").

In this case, the facts are clear that Singh was neither evasive in answering questions nor was he found to be obviously evasive.

In *Guo v. Ashcroft*, 361 F.3d 1194, 1201 (9th Cir. 2004) (quoting *Sidhu v. INS*, 220 F.3d 1085, 1092 (9th Cir. 2000), it was ruled that "it is inappropriate to base an adverse credibility determination on an applicant's inability to obtain corroborating affidavits from relatives or acquaintances living outside of the United States--such corroboration is almost never easily available." The evidence that Singh was expected to produce was expected from India, which was not easily available, ex. minor spelling variations in the documents like, Rajwinder and Rajvinder, which is pronounced as same but due to translation from Punjabi to English may have spelling variations. The letter "vava" in the Punjabi language gives the sound of "V" AND "W". So it is correct to write Rajwinder Singh as RajVinder Singh or RajWinder Singh. Besides, the voter's ID carries his picture.

Undoubtedly, it has been ruled that "where the IJ has reason to question the applicant's credibility, and

the applicant fails to produce non-duplicative, material, easily available corroborating evidence and provides no credible explanation for such failure, an adverse credibility finding will withstand appellate review." *Sidhu v. INS*, at 1092; see also *Mejia-Paiz v.* INS, 111 F.3d 720, 724 (9th Cir. 1997) (affirming IJ's adverse credibility finding based on alien's failure to produce readily-accessible, material corroborating evidence). In this case, Singh did submit substantial corroborating evidence, however, the IJ based credibility finding on minor discrepancies in the submitted documents, and not for his failure to produce non-duplicative, material, easily available corroborating evidence. IJ and BIA cast doubt on the photo copy of appellant's passport, Indian driver's license, and voter ID card. IJ expressed doubt regarding the respondent's explanation as to how he obtained this partial photocopy. BIA further hold, " we agree with Immigration Judge that these documents offer little probative value as to the identity of the respondent as the driver's license does not possess the required indicia of authenticity and respondent's name is misspelled on the ID card." It is an error to cast doubt on the authenticity of the passport simply because IJ was not satisfied how appellant got the photocopy of the passport. How and when the photocopy of the passport was done is not important? What is important is to know if the photocopy of the passport is authentic and true. Passport is an easily verifiable document. IJ or Attorney General could have verified the documents from the Indian Authority.

In the absence of original passport, the Court should find the photocopy of the passport admissible, authentic and true which would establish the identity of the petitioner.

Similarly, BIA was in error to reject appellant's Indian driver license because it "does not possess the

required indicia of authenticity." Indian driver license carries appellant's photograph and issuing authority's stamp and signature. It has all the indicia of authenticity.

Passport, Indian Driver's license, and voter ID card are official documents. These documents were easily verifiable by the State Attorney but choose not have them verified.

This circuit has ruled in *Ladha v. INS*, 215 F.3d 889 (9th Cir. 2000), that corroboration of credible testimony is unnecessary, and it has no bearing on the question of whether failure to corroborate can justify an adverse credibility determination." See *Sidhu*, 220 F.3d at 1090 n.2. This is not the testimony of Singh that was found to be not credible but based upon minor discrepancies in the submitted evidence, Singh was found to have lacked credibility, which was clearly an erroneous finding of the IJ and the BIA, giving rise to abuse of discretion, and violation of substantial evidence standard.

INA Section 242(b)(4)(B), 8 USC Sec. 1252(b)(4)(B), establishes the "substantial evidence" standard for review of fact-findings. See, e.g., *Chen v. INS*, 266 F.3d 1094, 1098 (9th Cir. 2000); *Sidhu v. INS*, 220 F.3d 1085, 1088 (9th Cir. 2000); *Brijmati Singh v. INS*, 134 F.3d 962, 966 (9th Cir. 1998); *Sangha v. INS*, 103 F.3d 1482, 1487 (9th Cir. 1997); *Ramos-Vasquez v. INS*, 57 F.3d 857, 861 (9th Cir. 1995) (review of negative credibility finding).

The Ninth Circuit has ruled that corroboration can be necessary only if an immigration judge (IJ) has reason to question an applicant's credibility and material corroborating evidence is easily available. See *Sidhu v. INS*, 220 F.3d. 1085, 1091-92 (9th Cir. 2000) (citing *Mejia-Paiz v. INS*, 111 F.3d 720, 724 (9th Cir. 1997)). Here, Singh's testimony by itself in the record was credible, but it was found to be not credible

because of minor discrepancies in the submitted documentation. In *Ceballos-Castillo v. INS*, 904 F.2d 519, 520 (9th Cir. 1990), the Court opined that inconsistencies must be substantial and go to the heart of the asylum claim in order to form the basis for a negative credibility finding. Inconsistencies as to the length of the respondent's detention do go directly to the heart of the respondent's claim. See *Chebchoub v. INS*, 257 F.3d 1038, 1043 (9th Cir. 2001).

CONCLUSION

The record proves that the petitioner credibly testified, submitted all of the corroborating evidence in his control and possession. He submitted substantial corroborating evidence that was readily available and he did not fail to submit any additional evidence that was readily available to him. Therefore, applying the substantial evidence standard, the BIA abused its discretion to affirm the credibility findings of the IJ and in denying the claimed relief of Asylum, Withholding of Removal, and CAT protection. Petitioner respectfully requests review of this matter. The petitioner respectfully requests an oral argument to further explain and elaborate on the foregoing issues and to address the issues in the record.

Respectfully submitted.

Rajwinder Singh

APPENDIX A

DECISION
OF
THE BOARD OF IMMIGRATION APPEALS

U.S. Department of Justice

Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A79 244 995 – Seattle
In re: RAJWINDER SINGH

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pardeep Singh Grewal, Esquire
ON BEHALF OF DHS: Margaret A. Rosenast
Assistant Chief Counsel

CHARGE:

Notice: Sec 237(a)(1)(B),I&N Act [8U.S.C. section 1227(a)(1)(B) – In the United States in Violation of law

APPLICATION: Asylum; withholding of removal; Convention Against Torture.

ORDER:

PER CURIAM. This case was last before the Board on April 13, 2004, when we remanded the record to the Immigration Judge for further fact-finding and a clarification of how the facts of the case relate to the legal conclusion made. On

October 1, 2004, after a new hearing, an Immigration Judge denied the respondent's applications for asylum and withholding of removal under sections 208 and 241(b)(3) of Immigration and Nationality Act, 8U.S.C. sections 1158 and 1231(b)(3), and protection under the Convention Against Torture, 8 C.F.R. section 1208.16(2005). The respondent's appeal will be dismissed.

We note first that the record supports the Immigration Judge's determination to pretermit the respondent's application for
asylum based upon his failure to file an asylum application within the 1-year filing deadline as the respondent was unable to establish any changed circumstances affecting his eligibility or extraordinary circumstance relating to the delay in filing an application (I.J. at 27-28); section 208(a)(2)(D) of Act, 8 U.S.C. section 1158(a)(2)(D)

The Immigration Judge found reason to question the veracity of the respondent. For example, in his decision, the Immigration Judge cited the respondent's failure to provide any form of credible identification and inconsistencies between his testimony and application for asylum regarding the date and manner of his entry into the United States (IJ at 24-25). The respondent's original application for asylum states that he departed India on January 25, 1999, entered the United States without inspection, and that he had never been issued a passport or travel document by any country (Exh.2). At his asylum interview, the respondent stated that he entered with inspection on November 23, 1997, as a P-1 entertainer, and that his visa expired on December 26, 1997; he did not amend his asylum application to indicate that

he had traveled on a valid passport (Exh. 3). The respondent then testified at his merits hearing that he was issued a legitimate Indian passport, but that after having arrived in the United States he gave it to the agent who made his travel arrangements (Tr. At 9-11;38-39). Instead of applying to the Indian government for a new or reissued passport, the respondent submitted to the court only a partial photocopy of what he claimed was his legitimate passport (Exh.6)The Immigration Judge expressed doubt regarding the respondent's explanation as to how he obtained this partial photocopy (Tr. At 37-38;IJ at 6). The respondent also submitted on Indian driver's license and voter ID card as proof of his identity. However, we agree with the Immigration Judge that these documents offer little probative value as to the identity of the respondent as the driver's license does not possess the required indicia of authenticity and the respondent's name is misspelled on the voter ID card (IJ at 26; Exhs,2B and 2C). Further undermining the authenticity of these documents was the respondent's admitted fraudulent purchase of a New York State identity document which he used to obtain a valid Washington State driver's license, instead of using the allegedly legitimate Indian identity documents for that purpose (Tr. At 42-43; 46-49). We find the contradictions between the respondent's sworn testimony and his original application for relief. Regarding the date and manner of his entry, and the issues of authenticity involved with the documents submitted in support of his identity to seriously undermine the veracity of his overall claim for relief. In addition, the evidence of record is insufficient to sustain the respondent's burden of proof in establishing his identity for purpose of

qualifying for relief under the Act (IJ at 28). Finally, the Immigration Judge also found that the respondent's testimony was vague and lacking in material detail with regard to his activities on behalf of the All India Sikh Student Federation (AISSF), and that he evidenced an overall lack of knowledge of his party's political platform and its leadership (Tr. At 74-78; IJ at 23-24).

In the light of these significant inconsistencies, the record supports the conclusion that the respondent's testimony alone is not sufficient to sustain the burden of proof. We recognize that the United States Court of Appeals for the Ninth Circuit has found that an alien's testimony may be found believable without the necessity of introducing corroborating evidence. However, we do not understand the circuit's rulings on corroboration to prevent us and the Immigration Judge from requiring corroboration of identity which is lacking here. See Sidhu v INS, 220 F.3d 1085 (0th Cir. 2000) (corroborative evidence may be required where credibility is lacking or in doubt). The Immigration Judge also identified other reasonably available corroboration that the respondent did not provide, such as corroboration of his membership in the AISSF and affidavits from those individuals with contemporaneous knowledge of the events described by the respondent, such as from a cousin who presently resides in the United States (Tr. At 50-51); see *Chebchoub v INS* , 257 F, 3d 1038,1042 (9th Cir. 2001) (stating that "if the trier of facts either does not believe the applicant or does not know what to believe, the applicant's failure to corroborate his testimony can be fatal to his asylum application" and that : regulations unambiguously contemplate cases where an applicant's testimony

alone will not satisfy his burden of proof"). Therefore, we agree with the Immigration Judge's decision to deny the respondent's application for withholding of removal. Finally, the Immigration Judge correctly concluded that the respondent failed to demonstrate eligibility for relief pursuant to Convention Against Torture. Accordingly, the appeal is dismissed.

FOR THE BOARD

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT'S REVIEW OF AN ORDER OF THE BOARD OF IMMIGRATION APPEALS

Filed: JAN 18 , 2008
CATHY A CATTERSON, CLERK,
U.S COURT OF APPEAS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RAJWINDER SINGH	)
	) No. 06-704 25
Petitioner	) Agency No:.
	) A79-244-995
V	)
	) MEMORUNDUM*
	)
MICHAEL B. MUKASEY,	)
Attorney General	)
,	)
	)
Respondent	)
	)

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted January 14, 2008**

Before: HALL, O'SCANNLAIN, and PAEZ, Circuit Judges.

Rajwinder Singh, a native and citizen of India, petitions for
review of a Board of Immigration Appeals' ("BIA") decision affirming the immigration Judge's order

denying his application for withholding of removal and for relief under the Convention Against Torture("CAT"). We have jurisdiction pursuant to 8 U.S.C. section 1252. We review for substantial evidence, *Li v Ashcroft,* 378 F.3d 959,962 (9th Cir,2004) , and we deny the petition.

The BIA concluded that significant inconsistencies undermined the veracity of Singh's claim and that the record was not sufficient to sustain Singh's burden of proof. Because these conclusions are based on cogent and factually supported reasons, we conclude that substantial evidence supports the BIA's determination that Singh did not sustain his burden of proof regarding his withholding of removal claim. *See id* at 964; *See also* 8 U.S.C. section 1252(b)(4); *Sidhu v INS,* 220 F. 3d 1085, 1092 (9th Cir. 2000)

Substantial evidence supports the BIA's denial of CAT relief because Singh's CAT claim is based on the same testimony that the BIA found not credible and because he points to no other evidence that BIA should have considered in making its CAT determination. *See Farah v Ashcroft,* F. 3d 1153, 1157 (9th Cir.2003)

PETITION FOR REVIEW DENIED.

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* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2)

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT'S ORDER TO DENY PETITION FOR REHEARING EN BANC

Filed: OCT 16 , 2008
MOLLY C, DWYER, CLERK,
U.S COURT OF APPEAS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RAJWINDER SINGH	)
	) No. 06-70425
Petitioner	) Agency No:.
	) A79-244-995
	)
V	) ORDER
	)
MICHAEL B. MUKASEY,	)
Attorney General,	)
	)
Respondent	)
	)

Before: HALL, O'SCANNLAIN, and PAEZ, Circuit Judges.

This panel has voted to deny the petition for panel rehearing.

The full court has been advised of petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35

The petition for panal rehearing and petition for rehearing en banc are denied.

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT'S MANDATE TO DENY PETITION FOR REHEARING EN BANC

Filed: OCT 29 , 2008
MOLLY C, DWYER, CLERK,
U.S COURT OF APPEAS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RAJWINDER SINGH	)
	) No. 06-70425
Petitioner	) Agency No:.
	) A79-244-995
	)
V	) MANDATE
	)
MICHAEL B. MUKASEY,	)
Attorney General,	)
	)
Respondent	)
	)

The judgment of this Court, entered 01/18/08, takes effect this date. This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT

Molly C. Dwyer
Clerk of Court

By: Rhonda Roberts